Supreme Court U.S.
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No. 01-757

IN THE

Supreme Court of the United States

SYNGENTA CROP PROTECTION, INC., ROBERT BABB, EDEE TEMPLET, and KENNETH A. DEVUN,

Petitioners,

v.

HURLEY HENSON,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

REPLY BRIEF

ALAN B. NADEL
Litigation Counsel
SYNGENTA CROP PROTECTION, INC.
410 Swing Road
Greensboro, NC 27419
(336) 632-6492

HENRY B. ALSOBROOK, JR.
Counsel of Record
MARK C. SURPRENANT
ROBERT N. MARKLE
VALERIA M. SERCOVICH
ADAMS AND REESE LLP
4500 One Shell Square
New Orleans, LA 70139
(504) 581-3234

Attorneys for Petitioners

174896

COUNSEL PRESS
(800) 274-3321 • (800) 359-6859

STATEMENT PURSUANT TO RULE 29.6

The corporate disclosure statement for Petitioner, Syngenta Crop Protection, Inc., was set forth at page ii of Petitioners' Opening Brief, and there are no amendments to that Statement.

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ARGUMENT

I. The All Writs Act Enables a Federal Court to Protect and Effectuate Judgments it has Rendered, and Over Which It has Retained Jurisdiction, from the Actions of Those Who Act to Thwart Them

Petitioners Syngenta Crop Protection, Inc. (previously Ciba-Geigy Corporation), Robert Babb, Edee Templet, and Kenneth A. Devun have expressly acknowledged that the All Writs Act does not, by its specific terms, provide federal courts with an independent grant of jurisdiction. Pet. Br. at 9 (citing *Clinton v. Goldsmith*, 526 U.S. 529, 534-35 (1999)). Respondent Hurley Henson's use of that non-issue as a multi-page pummeling of a judicial straw man, *see* Resp. Br. at 14-19, is therefore quite unnecessary.

With nary a hint of irony, Henson suggests that "removal of this case — in the normal course of federal procedure — would have been manifestly improper."[1] Resp. Br. at 13. He avers that federal question jurisdiction is nonexistent because "'Congress has not authorized removal based on a defense or an anticipated defense federal in character.'" Resp. Br. at 13 (quoting *Rivet v. Regions Bank of Louisiana*, 522 U.S. 470, 472 (1998)). And thus, because "'[c]laim preclusion (res judicata) . . . is an affirmative defense," a "prior federal judgment does not transform . . . state-law claims into federal claims but rather extinguishes them altogether.'" Resp. Br. at 13 (quoting *Rivet*, 522 U.S. at 476-77) (further citations omitted).

While Respondent's quotations from *Rivet* are accurate, they have no bearing on this case. Unlike the district court in *Rivet*, the court here did not take jurisdiction based on an

1. Henson's own intransigence created this odyssey — extending far beyond the "normal" course of federal procedure.

affirmative defense of *res judicata* or the enigmatic second footnote of *Federated Dep't Stores, Inc. v. Moitie*, 452 U.S. 394, 397 n.2 (1981).

Rather, the court appropriately used its power under the All Writs Act to take jurisdiction over state-law claims that threatened the integrity of the court's judgment in the national class action settlement. That is, the court exercised removal jurisdiction "to effectuate and prevent the frustration of orders" the court had "previously issued in its exercise of jurisdiction otherwise obtained." *See United States v. New York Tel. Co.*, 434 U.S. 159, 172 (1977). The district court's power to do what it did flowed from its ongoing supervisory jurisdiction, expressly retained, *see* J.A. 88a, 93a, in the national class action settlement.

Having purposefully intervened in the national class-action settlement, Henson "was not free to abuse the dual court system. . . ." *Travelers Indem. Co. v. Sarkisian*, 794 F.2d 754, 761 (CA2), *cert. denied*, 479 U.S. 885 (1986). Although principles of comity command careful consideration, where important federal interests are at stake, comity yields. *United States v. Gillock*, 445 U.S. 360, 373 (1980). Protecting its judgments and preventing the frustration of its orders are, doubtless, important federal interests. The All Writs Act enables a federal court to protect those interests — to halt the efforts of those who would thwart the court's judgments and flout its authority.

II. The All Writs Act Achieves the Rational Ends of Law

The All Writs Act "has served since its inclusion, in substance, in the original Judiciary Act as a 'legislatively approved source of procedural instruments designed to achieve the rational ends of law.'" *Harris v. Nelson*, 394 U.S. 286, 299 (1969) (quoting *Price v. Johnston*, 334 U.S. 266,

282 (1948)). Indeed, "[t]he Court has consistently applied the Act *flexibly* in conformity with these principles." *New York Tel. Co.*, 434 U.S. at 173 (emphasis added).

Under appropriate circumstances, the power conferred by the Act encompasses even those persons who have taken *no* affirmative act to hinder justice. *Id.* at 174. Here, the Eleventh Circuit concluded that Henson *did* act affirmatively to interfere with the implementation of the class settlement — egregiously enough that the court deemed appropriate the sanctions the district court had imposed. J.A. 18a.

A. Availability of Relief Under Exception to Anti-Injunction Act Does Not Undermine a Federal Court's All Writs Act Authority

Henson suggests that removal of the case is not available because Petitioners could have sought to enjoin the Louisiana court's proceedings under the relitigation exception of the Anti-Injunction Act, 28 U.S.C. § 2283. Providing that "[a] court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments," that Act generally prohibits federal courts from interfering with proceedings in state courts. *Chick Kam Choo v. Exxon Corp.*, 486 U.S. 140, 145 (1988).

The Act is not simply a codification of the principle of comity — to be applied or disregarded as the court sees fit — but, rather, is a clear-cut prohibition qualified only by specifically defined exceptions. *Atl. Coast Line R.R. Co. v. Bhd. of Locomotive Eng'rs*, 398 U.S. 281, 287 (1970). As this Court has explained, preventing frequent federal court intervention is vital to make the dual court system work effectively. *Chick Kam Choo*, 486 U.S. at 146. By generally

barring such intervention, "the Act forestalls 'the inevitable friction between the state and federal courts that ensues from the injunction of state judicial proceedings by a federal court.'" *Id.* (quoting *Vendo Co. v. Lektro-Vend Corp.*, 433 U.S. 623, 630-31 (1977) (plurality opinion)).

Exceptions to the Act's broad injunctive bar are few. A federal court may enjoin state proceedings when: 1) expressly authorized by statute; 2) necessary in aid of the court's jurisdiction; 3) necessary to protect or effectuate the court's judgment. "These exceptions are designed to ensure the effectiveness and supremacy of federal law. But as the Court has recognized, the exceptions are narrow and are 'not [to] be enlarged by loose statutory construction.'" *Chick Kam Choo*, 486 U.S. at 146 (quoting *Atl. Coast Line R.R. Co.*, 398 U.S. at 287).

The third exception, i.e., the "relitigation exception," is the one Henson believes applicable to this case. Congress designed this exception to enable a federal court to prevent state litigation of an issue that previously was presented to — and decided by — the federal court. The exception is based on "the well-recognized concepts of *res judicata* and collateral estoppel." *Id.* at 147.

This case, however, is distinct from the typical claim-preclusion or issue-preclusion matter. It is not, for example, a routine two-party contract-breach suit, litigated to judgment in a federal court, that was followed by a state-court contract-breach suit filed by the dissatisfied federal litigant. Rather, it involves a party who sued defendants who were already defendants in a nationwide class action, seeking damages for identical exposure claims. Not only was Henson not unacquainted with the previous suit, he traveled two states away and intervened in it, assuring that he would have control over, and would benefit from, its outcome.

He participated in that suit, and his objections were taken into account when the final settlement agreement was confected; in short, his continued participation in the nationwide class action was both substantial and meaningful. He signed the settlement stipulation knowing full well that he was obliged to dismiss the state-court suit, or, at the very least, to cooperate in seeking its dismissal.

He also knew that the district court was to: "retain jurisdiction over this case," "use its equitable powers to enforce this [stipulation]," and "protect its jurisdiction over this case and all parties." J.A. 39a. He was aware that the court would "have jurisdiction over all phases of" the settlement stipulation. J.A. 39a. Indeed, embodied in the judgment are the words "[t]he court shall retain jurisdiction with respect to future performance of, and any claims related to performance of, the [s]ettlement agreement and judgment." J.A. 88a.

This is precisely the type of extraordinary circumstance that justifies a removal so that a federal court that retains — and never relinquishes — jurisdiction in a case may protect its judgment and put an immediate end to a recalcitrant litigant's flouting of that judgment. Contrary to Henson's assertion, the district court is not prohibited from removing the case simply because Petitioners *could* have sought relief, and *might* have succeeded in obtaining relief, under the relitigation exception to the Anti-Injunction Act. Rather, as the Court of Appeals for the Eighth Circuit recognized in *Nat'l Ass'n for the Adv. of Colored People v. Metro. Council*, 144 F.3d 1168 (CA8), *cert. denied*, 525 U.S. 826 (1998), relief by way of injunction under the relitigation exception is "another procedural option," but its availability does not preclude the district court's use of the All Writs Act to protect its judgment. *Id.* at 1172.

Henson contends that the use of an injunction in the circumstances of this case "is less chafing of the federalism concerns implicated in the autonomy and dignity of state courts than the outright ousting of state court jurisdiction via removal." Resp. Br. at 26. Not so.

Were removal to be held improper under the All Writs Act, however, the Louisiana court would be faced with a situation in which any order it issued would be subject to the injunctive powers of the federal court under the relitigation exception. Thus, the use of the All Writs Act in this case to effectuate removal is "a less drastic, and therefore preferable, result." *Yonkers Racing Corp. v. City of Yonkers*, 858 F.2d 855, 864 (CA2 1988), *cert. denied*, 489 U.S. 1077 (1989); *see also Nat'l Ass'n for the Adv. of Colored People v. Metro. Council*, 125 F.3d 1171, 1174 (CA8 1997) (given the choices, removal better preserves state-federal relations than would a resort to injunction); *Ryan v. Dow Chem. Co.*, 781 F. Supp. 902, 918 (E.D.N.Y. 1991) (removal of actions to federal court, under the circumstances, is preferred because it affords greater comity to state courts and is less burdensome than injunction), *aff'd sub nom., In re Agent Orange Prods. Liab. Litig.*, 996 F.2d 1425 (CA2 1993), *cert. denied sub nom., Ivy v. Diamond Shamrock Chems. Co.*, 510 U.S. 1140 (1994), *Hartman v. Diamond Shamrock Chems. Co.*, 510 U.S. 1140 (1994).

Thus, the use of the All Writs Act to effect the removal and dismissal of the case that Henson was obliged, under the settlement agreement, to dismiss is not prohibited merely by virtue of the fact that Petitioners had available another option.

B. A Mere Preclusion Defense is Not at Issue

One certainly cannot argue with Henson's statement that "[p]referably, state courts should be permitted to resolve for themselves issues of the preclusive effect of previous federal judgments." Resp. Br. at 27. Were this case simply about the ability of a state court to analyze and resolve a defensive plea of claim-preclusion or issue-preclusion based upon an antecedent federal court judgment, Henson's assertion that "federal courts should allow state court proceedings on the preclusive effect of federal judgments to run their course, including the ultimate reviewing power of this Court," Resp. Br. at 27, would be reasonable enough. But that is not what this case entails.

Henson signed a settlement stipulation that required that the "related case," i.e., this one, be dismissed upon approval of the nationwide class settlement. Accordingly, he was not free to proceed with the state case, in direct violation of the settlement stipulation. Had he not signed the settlement stipulation, Henson might have been free to proceed, compelling Petitioners to make a defensive preclusion plea. But by virtue of the federal court's judgment, which incorporated the settlement agreement, Henson relinquished the option to proceed with his state court case at all.[2] Petitioners agreed to the settlement, among other reasons, to be free from the significant costs and further burdens of such endeavors. And the federal court, having approved the

2. That did not stop him from trying, though. He filed a first amended petition, J.A. 94a-137a. He even attempted to file a second amended petition, which he has included as Appendix F to his Respondent's Brief. Petitioners withheld this document from the Joint Appendix because it did not appear in either the state court record or the federal court record. That it was incorrectly included in the Record Excerpts Henson filed in the Eleventh Circuit, *see* Resp. Br. at 5 n.1, does not alter the fact that it simply never existed as a part of the record.

settlement and having specifically retained ongoing supervisory jurisdiction, was entitled to have its judgments respected — not openly and actively flouted — by the settlement's signatories.

This case does not involve the question of a state court's competence to entertain a *res judicata* plea and, presumably, to reach the right result. Neither does it involve a question of proper deference to the state court. Rather, it is an extraordinary example of one who, after participating in the formulation of the settlement agreement, unabashedly ignores its fundamental requirements.

Those who, like Petitioners, have acted in good faith to reach a national resolution of a dispute are entitled to rely on the settlement agreement, as embodied in the federal court's judgment. Under just such extraordinary circumstances, the federal court must have at its disposal the means to put to a quick end the further efforts of those who, like Henson, refuse to abide by the federal court's judgment.

The All Writs Act is the very means by which the court is permitted to act to ensure its judgments are complied with and to protect those like Petitioners who have willingly complied.

III. Ancillary Jurisdiction Supports the District Court's Removal of the Suit

A. The Issue is Properly Before the Court

Respondent asserts that the ancillary jurisdiction doctrine is not properly before the Court. Resp. Br. at 29-30. He is mistaken. As Henson acknowledges, Petitioners invoked jurisdiction under 28 U.S.C. §§ 1651(a) and 1367 when

removing the case from state court. Resp. Br. at 29. In their brief to the Court of Appeals for the Eleventh Circuit, Petitioners again invoked those statutes.

Referring specifically to 28 U.S.C. § 1367, this Court has explained that Congress combined the doctrines of pendent and *ancillary jurisdiction* under a common heading. *City of Chicago v. Int'l Coll. of Surgeons*, 522 U.S. 156, 165 (1997). That the Eleventh Circuit opted not to address the issue does not mean Petitioners did not raise it earlier, and it certainly does not bar them from raising it now.

Respondent has also expressed puzzlement about Petitioners' formulation of the question presented — slightly different in their brief from its phrasing in their cert. petition. But the slight alteration rests on no sinister underpinnings. This Court's Rule 24.1(a) provides that "[t]he phrasing of the questions presented [in the brief] need not be identical with that in the petition for a writ of certiorari . . . but the brief may not raise additional questions or change the substance of the questions already presented. . . ." Petitioners have raised no additional questions nor have they changed the substance of the question already presented.

Indeed, in compliance with Rule 14.1(a), Petitioners' question is not argumentative, is not repetitive, and is short. Moreover, the ancillary jurisdiction doctrine is inextricably bound up with a federal court's use of the All Writs Act to remove a suit from state court so that it may protect and effectuate a judgment in a matter in which it has specifically retained ongoing jurisdiction. *See* 14C CHARLES ALAN WRIGHT, ARTHUR R. MILLER, & EDWARD H. COOPER, FEDERAL PRACTICE AND PROCEDURE § 3729, at 236-37 (3d ed. 1998) (federal court's exercise of All Writs Act authority to remove otherwise non-removable state court case to effectuate and prevent frustration of orders previously issued in exercise of

jurisdiction otherwise obtained is in nature of ancillary removal jurisdiction). It is thus fairly included within the question presented.

B. The Ancillary Jurisdiction Doctrine Applies

It is a fair assumption that if one or more of this Court's precedents *compelled* a result in this case, the case would not now be awaiting the Court's review. Petitioners are therefore at a loss to determine why Respondent has taken such pains to focus the Court's attention on the strict holding in *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375 (1994), as though Petitioners had argued that *Kokkonen* dictates the outcome here. *See* Resp. Br. 32. They did not and do not.

Kokkonen involved a claimed breach of a settlement agreement, which this Court determined did not flout or imperil the district court's earlier judgment of dismissal. *Id.* at 380. The Court, however, carefully noted that the

> *situation would be quite different* if the parties' obligation to comply with the terms of the settlement agreement had been made part of the order of dismissal — either by separate provision (such as a provision "retaining jurisdiction" over the settlement agreement) or by incorporating the terms of the settlement agreement in the order.

Id. at 381 (emphasis added). As if anticipating the circumstances of this case, the Court explained that "a breach of [such an] agreement would be a violation of the order, and ancillary jurisdiction to enforce the agreement would therefore exist." *Id.* In *Kokkonen*, the trial court's "mere awareness and approval of the terms of the settlement

agreement" did not suffice to make them part of the order. *Id.* Under *Kokkonen*'s facts, this Court's holding was hardly surprising.

The situation here, however, is "quite different." The trial court expressly "retain[ed] jurisdiction with respect to future performance of, and any claims related to the performance of, the Settlement agreement and judgment." J.A. 88a, 93a. As contemplated in *Kokkonen*, Respondent's breach of the agreement in this case violated the district court's order, and ancillary jurisdiction to protect and effectuate the district court's judgment therefore exists.

Respondent may not be as brazen in his disregard of the district court's judgment as was President Jackson in his dismissive statement about *Worcester v. Georgia*, 6 Pet. 515 (1832). *See* Pet. Br. at 7. But neither did President Jackson intervene in *Worcester* and shape a settlement agreement — one whose terms he promptly disregarded.

Federal courts are, undeniably, courts of limited jurisdiction. That status, however, has never obliged them to sit feebly by — pitiful, helpless giants — while litigants decide unilaterally whether it pleases them to be bound by the courts' judgments. Were a federal court without jurisdiction to enforce a judgment it has entered, the judicial power would be but a sham — incomplete and entirely inadequate to the purposes for which it was bestowed in the Constitution. *See Riggs v. Johnson County*, 6 Wall. 166, 187 (1868).

Respondent's concern about the creation of unwarranted federal and state court conflicts, *see* Resp. Br. at 35, is — at least in the abstract — both understandable and admirable. But it is imperative to recall that Respondent himself has provoked whatever clash may exist. No one dragooned him

into the Southern District of Alabama. He did not opt out of the nationwide settlement class. Quite the contrary; he freely intervened. Having participated in the settlement's confection, influenced its terms, and obtained its benefits, Respondent triumphantly returned to Louisiana. Apparently not yet sated, he sought to sweeten the bargain he struck with Petitioners in federal court — intentionally disobeying one of the bargain's fundamental terms — by proceeding in state court with the very case he had pledged to dismiss.

One of Respondent's proposed alternatives to enabling the federal court to put a stop to the efforts to thwart its judgment is "deferral to [the] state court[] . . . ," presumably relying on the state court to bar the suit. Resp. Br. at 35. Petitioners, however, by entering into a nationwide settlement, intended to arrange their financial affairs — to buy stability. Whatever benefit Petitioners, or others who find themselves in a similar position, may have bargained for will be irretrievably lost should they be compelled to litigate, in state court, that which they have already settled in federal court. The burdens on both judicial systems are exponentially increased.

While not perfectly analogous, this Court's rulings on qualified immunity are instructive when contemplating what litigants like Petitioners stand to lose should the federal courts be deemed to lack jurisdiction to enforce settlement agreements over which they have expressly retained jurisdiction. The Court has explained that "[q]ualified immunity is 'an entitlement not to stand trial or face the other burdens of litigation.'" *Saucier v. Katz*, 533 U.S. 194, 200 (2001) (quoting *Mitchell v. Forsyth*, 472 U.S. 511, 526 (1985)). This immunity is "'an *immunity from suit* rather than a mere defense to liability . . . .'" *Id.* And it is "'effectively lost if a case is erroneously permitted to go to trial.'" *Id.* at 201 (quoting *Mitchell*, 472 U.S. at 526).

One who, like Petitioners, settles a nationwide class action in federal court and bargains with one like Respondent, who intervened and, in the settlement agreement, agreed to dismiss a closely-related state suit in its entirety, will effectively lose the benefit of his bargain if he must litigate a *res judicata* bar in state court. "[A] federal court need not stand idly by and hope that the state court perceives that the issues before it formed the basis of prior federal court litigation." *Int'l Ass'n of Machinists & Aerospace Workers v. Nix*, 512 F.2d 125, 132 (CA5 1975). A binding settlement agreement, when the district court has retained jurisdiction to preside over its implementation, should stand as an entitlement not to face the burdens of further litigation.

Ancillary enforcement jurisdiction is, indeed, "a creature of necessity." *Peacock v. Thomas*, 516 U.S. 349, 359 (1996). To protect and effectuate their judgments in complex litigation in which they have retained jurisdiction, federal courts urgently need just such a creature.

CONCLUSION

The judgment of the Court of Appeals for the Eleventh Circuit should be reversed, and the judgment of the trial court dismissing the case with prejudice should be reinstated.

Respectfully submitted,

ALAN B. NADEL
Litigation Counsel
SYNGENTA CROP PROTECTION, INC.
410 Swing Road
Greensboro, NC 27419
(336) 632-6492

HENRY B. ALSOBROOK, JR.
Counsel of Record
MARK C. SURPRENANT
ROBERT N. MARKLE
VALERIA M. SERCOVICH
ADAMS AND REESE LLP
4500 One Shell Square
New Orleans, LA 70139
(504) 581-3234

Attorneys for Petitioners